

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR- 05-0438 MMC

Plaintiff,

v.

**ORDER FOR CRIMINAL
PRETRIAL PREPARATION**

Russell Johansen,

Defendant.

Good cause appearing, IT IS HEREBY ORDERED that:

TRIAL:

Trial will begin on **MONDAY, January 9, 2006, at 9:00 a.m.** Estimated length of trial is ONE day.

DISCOVERY:

By the close of business, **THURSDAY, December 8, 2005**, the parties will exchange the information, documents and tangible objects authorized by Fed.R.Crim.P. 16. Additional discovery shall be by motion accompanied by affidavits setting forth the unusual circumstances justifying discovery beyond the limits of Fed.R.Crim.P. 16.

PRIOR TO FILING ANY DISCOVERY-RELATED MOTIONS, COUNSEL SHALL:

1. Meet and confer with opposing counsel, and
2. File a declaration, under penalty of perjury, that counsel has conferred with opposing counsel with respect to each

For the Northern District of California

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1 Not less than **five court days** before the Pretrial
 2 Conference, defense counsel shall comply with subparagraphs (3) and
 3 (4) above, and, to the extent consistent with the defendant's right
 4 to an effective defense, with subparagraphs (1), (2) and (5) above.

5 Counsel shall confer in advance of the Pretrial
 6 Conference and be prepared to discuss with the Court any
 7 anticipated evidentiary objections and any means for shortening and
 8 simplifying the trial (e.g., by stipulating to such matters as
 9 chain of custody, nature of substances, use of the mails, etc.).

10 **JURY INSTRUCTIONS:**

11 All proposed jury instructions and any objections thereto
 12 are to be served and submitted with the pretrial filings, with the
 13 exception of the following model instructions from the Ninth
 14 Circuit Manual, which will be given as indicated:

15 Before opening statement: **1.01 - 1.11 and 2.02.**

16 Before the first recess: **2.01.**

17 At the close of the evidence and before argument:
 18 **3.01 - 3.07 and 3.08 - 3.12** (as applicable).

19 At the close of argument and immediately before
 20 deliberations: **7.01 - 7.05.**

21 In advance of the pretrial filings the parties shall do
 22 the following:

23 (1) Meet and confer and resolve all jury instructions to
 24 the extent possible. Parties are expected to resolve
 25 technical or semantic differences.

26 (2) Prepare **one joint** set of instructions upon which the
 27 parties agree.

28 (3) The parties shall submit separately only those
 instructions upon which there is **substantive** disagreement.
 Each separate instruction shall note on its face the identity
 of the party submitting such instruction. The party or
 parties objecting to an instruction shall file a written
 objection. The form of the objection shall be as follows:

(a) Set forth in full the instruction to which
 objection is made;

(b) Provide concise argument and citation to
 authority explaining why the instruction is improper.

(c) Set forth in full an alternative instruction,
 if any;

1 (4) An original and two copies of the agreed-upon joint
2 instructions, separate instructions and objections shall be
3 filed on or before the date for filing the joint pretrial
4 statement and other pretrial materials.

5 (5) The parties shall be prepared to submit two clean
6 copies of instructions without citations, titles, or
7 attribution on or before the date trial commences.

8 (6) All instructions should be concise, understandable
9 and neutral statements of law. Argumentative instructions
10 will not be given and should not be submitted.

11 (7) Any modifications of instructions from Ninth Circuit
12 Model Jury Instructions, Devitt and Blackmar, or other form
13 instructions must identify the modifications made to the
14 original form instruction and the authority supporting the
15 modification.

16 **TRANSCRIPTS:**

17 If transcripts will be requested during or immediately
18 after trial, arrangements must be made with the court reporter at
19 least one week before trial commences.

20 **CHANGE OF PLEA:**

21 Counsel shall give prompt notice to the United States
22 Attorney and to the Court of any intention to change a previously
23 entered not guilty plea.

24 **EXHIBITS:**

25 Each party is responsible for their exhibits. Upon the
26 conclusion of the trial, each party shall retain their exhibits.
27 Should an appeal be taken, it is the party's responsibility to make
28 arrangements with the clerk of the Court to file the record on
appeal.

IT IS SO ORDERED.

United States District Court

For the Northern District of California

1 DATED: November 28, 2005

/s/ Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge